RECENT DECISIONS

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CARRIERS—ACCEPTANCE NOT "FOR PURPOSE OF TRANSMISSION"—ACTION BY CONSIGNEE.—The A. Coal Company had a contract with the plaintiff for coal f. o. b. the mine; and one with the defendant railroad for fuel, under which the Company was delinquent. After notification by the railroad that it would accept no further coal for the plaintiff while its own contract remained unfulfilled, the Coal Company delivered to the railroad, cars consigned to the plaintiff, from which the railroad removed the consignment tags, taking over the coal "under its contract". *Held,* as against the plaintiff, the coal belonged to the defendant, who had a right to refuse transportation and take the coal where necessary to operate the lines. *Springfield Light, etc. Co.* v. *Norfolk & W. Ry.* (D. C., S. D. Ohio, 1919) 260 Fed. 254.

Ordinarily the obligee cannot secure performance of a contract obligation by self-help. *Atlantic, etc. Co.* v. *Vulcanite, etc. Co.* (1911) 203 N. Y. 133, 96 N. E. 370. In the absence of an overriding public policy the defendant must be deemed to have converted the coal. If the summary eminent domain exercised be sanctioned independently of alleged contract rights, the railroad is still liable to pay the owner just compensation. Lewis, Eminent Domain (3rd ed.) § 889. The plaintiff's right to recover can arise only from an appropriation of the coal by the Company to the plaintiff's contract. *Fordice* v. *Gibson* (1891) 129 Ind. 7, 28 N. E. 303. Such appropriation demands (1) the assent of the seller, Uniform Sales Act § 19, rule 4 (1); Williston, Sales § 278,—this must be derived from the express purpose shown in tagging the cars, as modified by the seller's previous knowledge of the defendant's purpose to refuse transportation—, (2) the prior assent of the buyer. Usually the act which the buyer contemplates is not a conventional tender to the carrier, but the effectuation of a proper contract of shipment. *Buckman* v. *Levi* (1813) 3 Campb. 414; *Ward* v. *Taylor* (1870) 56 Ill. 494. Where the carrier had no intention of receiving the goods "for purpose of transmission", Uniform Sales Act §19, rule 4 (2), no contract can be based merely upon the common-law duty of the carrier to receive. See *Pittsburgh, etc., Ry.* v. *Morton* (1878) 61 Ind. 539, 573. The privilege to refuse posited in this case at most relieves the defendant of its liability to pay damages. *Atlantic Coast Line Ry* v. *Geraty* (C. C. A. 1908) 166 Fed. 10. Upon this interpretation of the facts, the defendant has converted the Company's coal, conferring no rights upon the plaintiff. But in passing, the reasoning of the court involves an extension of the principle of eminent domain hardly sanctioned in precedent and of doubtful effect upon the security of business transactions.

CARRIERS—LIABILITY FOR DEATH OF DOG—FAILURE TO EXERCISE.—The plaintiff in South Carolina delivered to the defendant Express Co. for carriage to Colorado a dog contained in a crate plainly marked "Exercise at least once each day while en route". The instruction was

not followed and three days later while still in transit the dog, being house-broken, died from failure to void. *Held,* the carrier was liable for the death of the dog. *Southern Express Co.* v. *McClellan* (Colo. 1919) 185 Pac. 347.

Express companies being common carriers are absolutely liable for the loss of articles which they hold themselves out to carry; except where the loss is due to the act of God; *Hibernia Ins. Co.* v. *St. Louis Trans. Co.* (1887) 120 U. S. 166, 7 Sup. Ct. 550; or to the public enemy; *Southern Express Co.* v. *Womack* (1870) 48 Tenn. 256; or where it arises from the act of public authority; *Bliven & Mead* v. *Hudson River R. R.* (1867) 36 N. Y. 403; or from the act of the shipper; *St. Louis & I. M. & S. Ry.* (1900) 68 Ark. 218, 57 S. W. 258; or from the inherent nature of the goods. See *Faucher* v. *Wilson* (1895) 68 N. H. 838, 38 Atl. 1002; *South & North Alabama R. R.* v. *Henlein* (1875) 52 Ala. 606, 613. Where the negligence of the carrier concurs with any of the above named exceptions, the carrier is responsible. According to the weight of authority in England and this country, the doctrine of insurer's liability is applied to the carriage of live stock. *Palmer* v. *Grand Junction Ry.* (1839) 4 M. & W. *749; *Kinnick* v. *Chicago, R. I. & P. Ry.* (1886) 69 Iowa 665, 29 N. W. 772. It is the duty of the carrier to take proper care of the articles transported, supplying where necessary refrigeration and ventilation; *Texas & N. O. R. R.* v. *Davis-Fowler Co.* (Texas 1910) 133 S. W. 309; and in the case of live stock it must adequately feed and water the animals, *Wallace* v. *Lake Shore & M. S. Ry.* (1903) 133 Mich 633, 95 N. W. 750. In order to better serve the public carriers may provide reasonable regulations, the court and not the jury passing on what is reasonable. *Harp* v. *Choctaw, O. & G. R. R.* (C. C. A. 1903) 125 Fed. 445; *Southern Ry.* v. *Watson* (1900) 110 Ga. 681, 36 S. E. 209; *Gregory* v. *Chicago & N. W. Ry.* (1896) 100 Iowa 345, 69 N. W. 532. So railroads may refuse to carry dogs on passenger trains, *Gregory* v. *Chicago & N. W. Ry., supra*; *Butler* v. *Steinway Ry.* (1895) 87 Hun 10, 33 N. Y. Supp. 845. And where they do not hold themselves out to transport dogs in their baggage cars and so notify the passenger, they are relieved from the insurer's liability. *Honeyman* v. *Oregon & C. R. R.* (1886) 13 Ore. 352, 10 Pac. 628. But where the carrier relation exists, the carrier is liable for failure to follow the instructions of the shipper, expressly given or where the package is plainly marked; *Uptegrove* v. *Central R. R.* (1896) 16 Misc. 14, 37 N. Y. Supp. 659; *Colbath* v. *Bangor & A. R. R.* (1909) 105 Me. 379, 74 Atl. 918; and where it is impossible so to do, notice must be immediately given to the shipper. *Cf. Fisher v. Boston & M. R. R.* (1904) 99 Me. 338, 59 Atl. 532. In the instant case the carrier undertook the transportation of the dog without objecting to the instructions of the shipper and the failure to comply therewith does not appear to have been without its fault. Consequently, the holding, that the carrier was responsible, seems to be correct.

CARRIERS—STREET CARS—PASSENGER RELATION WHILE TRANSFERRING.—Where a passenger leaves a street car with a transfer ticket and moves away on the highway to transfer to another car, *held,* he is still a passenger when injured by the car he has just left. *Feldman* v. *Chicago Rys.* (Ill. 1919) 124 N. E. 334.

Since the obligation of a carrier to exercise a special care with respect to a passenger rests on the fact that the safety of the passenger